

OFFICE OF THE ATTORNEY GENERAL

95-00194



JEFF SESSIONS
ATTORNEY GENERAL
STATE OF ALABAMA

APR 26 1995

ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (334) 242-7300

SECTION 16-13-40 OF THE
CODE OF ALABAMA HAS BEEN
REPEALED BY ACT NO. 95-314,
DATED JULY 7, 1995.

Honorable Thomas E. Ingram, Jr.
Acting State Superintendent
of Education
5103 Gordon Persons Building
Montgomery, AL 36130

Appropriations - Funds -
Boards of Education -
Salaries

Local boards of education
may transfer between and
among line items of annually
appropriated funds, except
those State-appropriated
funds specified by law to be
spent on personnel salaries,
provided that such transfers
shall not exceed 40% of the
amount appropriated for each
line item. Additionally,
the 40% limitation shall not
apply during years in which
proration is declared.

Dear Dr. Ingram:

This opinion is issued in response to your request for
an opinion from the Attorney General.

QUESTION

Code of Alabama 1975, § 16-13-40
provides that local boards of education
may transfer between and among line items
of annually appropriated funds, except
those State-appropriated funds specified
by law to be spent on personnel salaries,

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Local boards of education may transfer between and among line items of annually appropriated funds, except those State-appropriated funds specified by law to be spent on personnel salaries, provided that such transfers shall not exceed 40% of the amount appropriated for each line item. Additionally, the 40% limitation shall not apply during years in which proration is declared.

Dear Dr. Ingram:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION

Code of Alabama 1975, § 16-13-40 provides that local boards of education may transfer between and among line items of annually appropriated funds, except those State-appropriated funds specified by law to be spent on personnel salaries,

provided that such transfers shall not exceed 40% of the amount appropriated for each line item. The statute further states that "[s]uch limitation shall not apply during years in which proration is declared." Does the exception to the limitations during years in which proration is declared apply only to the limitation that transfers shall not exceed 40% of the amount appropriated for each line item, or does the exception also apply to the limitation regarding appropriated funds specified by law to be spent on personnel salaries?

FACTS AND ANALYSIS

Code of Alabama 1975, § 16-13-40 states:

"Any annually appropriated funds allocated to local boards of education, except those state appropriated funds specified by law to be spent for personnel salaries, may be transferred between and among line items, provided that such transfer shall not exceed 40 percent of the amount appropriated for each line item. Such limitation shall not apply during the years in which proration is declared, as provided in section 16-13-144."

Code of Alabama 1975, § 16-13-40 allows local boards of education to transfer annually appropriated funds allocated to local boards of education between and among line items. The statute contains two conditions: 1. Any funds may be transferred except those State-appropriated funds specified by law to be spent on personnel salaries, and 2. transfers shall not exceed 40% of the amount appropriated for each line item. Directly following the condition that transfers shall not exceed 40% of the amount appropriated for each line item, the law further provides that "[s]uch limitation shall not apply during years in which proration is declared." (Emphasis added.)

In cases involving the interpretation of statutes, Alabama courts have consistently held "that where a statute

Honorable Thomas E. Ingram, Jr.
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enumerates certain things on which it is to operate, the statute must be construed as excluding from its effect all things not expressly mentioned." Ex Parte Holladay, 466 So.2d 956 (Ala. 1985); Builders Transport Inc. v. Jochum, 585 So.2d 52 (Ala.Civ.App. 1991); Ex Parte Wells, 582 So.2d 1134 (Ala.Civ.App. 1991). Thus, because the law in question specifically states that the limitation shall not apply during proration years and this exception directly follows the limitation that transfers shall not exceed 40% of the amount appropriated for each line item, the exception only applies to the condition that transfers shall not exceed 40% of the amount appropriated for each line item. In other words, the sentence stating that the limitation shall not apply during years when proration is declared would have stated that both limitations shall not apply during proration years if the exception was to apply to both of the conditions set out in the section.

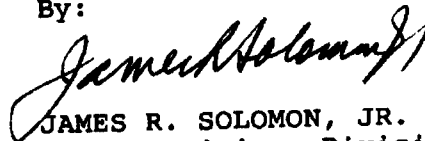
CONCLUSION

Local boards of education may transfer between and among line items any funds allocated to local boards of education, except those funds specified by law to be spent for personnel salaries, provided that such transfers shall not exceed 40% of the amount appropriated for each line item. The latter limitation shall not apply during years in which proration is declared.

I hope this sufficiently answers your question. If our office can be of further assistance, please contact James R. Solomon, Jr., of my staff.

Sincerely,

JEFF SESSIONS
Attorney General
By:



JAMES R. SOLOMON, JR.
Chief, Opinions Division

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